

# TERMS AND CONDITIONS FOR EACH SERVICE

## Wirefree Networks Agreement

This is the Contract between the Customer/Applicant and Wirefree Networks Pty Ltd, 44 111 818 896, for the supply of a wireless internet service specified on the application form and applies to you as a user of the service. The aim of this document is to ensure that you both know your rights and obligations when using the service as well as our rights and obligations.

### 1.0 Application and Variation of the Contract

- 1.1 This contract is the terms on which we provide the service to you and supersedes any previous contracts set by us. We may not modify the contract at any time without prior approval from the Department Of Communications, Information Technology and the Arts (DCITA). Should changes be approved at any stage, notification will be given at least one month prior to the changes taking place through your default E-mail address and posted on the front page of our website. This contract becomes active when the customer signs this agreement and is satisfied that Wirefree has met all its obligations on providing a broadband internet service chosen by the customer. Any use of the service after that publication will constitute an acceptance by you of that modification.
- 1.2 If we notify you of a proposed change that we consider detrimental to you, you may terminate the service provided you give us at least 7 days written notice prior to the new agreement taking action. Under this clause, there will be no termination fee applied to contracts, however all equipment owned by Wirefree Networks must be returned.

**Wirefree Networks commits to provide you with full information about the service.**

### 2.0 Services

- 2.1 Service Plans
  - 2.1.1 We will supply you with one of the services as nominated by you.
- 2.2 Speeds
  - 2.2.1 Advertised speeds are stated in kbps and are peak achievable download and upload rates.
  - 2.2.2 The expected average download and upload rates will not be less than the 80% of the nominated peak speeds at least 75% of the time as measured according to a prescribed testing schedule.
- 2.3 Usage Monitor
  - 2.3.1 An online usage monitor is available for your convenience. This monitor records both daily and monthly usage. It will be your responsibility to keep your usage in check. We do not give you prior notification if you are close to reaching your traffic limit.
- 2.4 Continuity Of Service
  - 2.4.1 We do not take responsibility for any loss, damage, liability or expense resulting for the lack of continuous provision of service.
  - 2.4.2 Wirefree Networks cannot guarantee connection to any particular internet site, however the service will be available at least 99 per cent of the time, averaged over a quarterly period.
- 2.5 E-mail Capacity
  - 2.5.1 E-mails sent and received through Wirefree Networks network can be no larger than 8MB inclusive of attachments and encapsulation.
  - 2.5.2 Sending an email to multiple recipients has been limited to 35 at a time in order to control 'spamming' on our network.
- 2.6 Monitoring
  - 2.6.1 Where it is deemed necessary in order to comply with legal obligations, Wirefree Networks may monitor data access while transmitted by you while using the service.

**2.6.2** We may take any steps deemed necessary to comply with legal obligations under the relevant state or federal legislations, industrial code of practice or under directions of regulatory authorities or court order.

**2.7** Changing of plan levels

**2.7.1** Upgrading

**2.7.1.1** To upgrade your account, you must provide written request stating your current account and the account you wish to upgrade to with authorisation to deduct the new amount from your nominated account if automatic payments have been arranged. You must also state if you wish to be upgraded immediately or from your next billing cycle.

**2.7.1.1.1** To upgrade immediately, payment must be received for the difference between the two accounts for the remainder of your current billing cycle prior to the account being upgraded.

**2.7.1.1.2** When upgrading from your next billing cycle, you will be invoiced prior to the commencement of your next billing cycle reflecting these changes.

**2.7.2** Downgrading

**2.7.2.1** To downgrade your account, you must have been on your current account level for a minimum of three (3) months.

**2.7.2.2** To downgrade your account, you must provide a written request stating you current account and the account you wish to downgrade to with authorisation to deduct the new amount from your nominated account if automatic payments have been arranged. Your new nominated account will take effect from your next billing cycle.

**2.7.2.3** You will be invoiced prior to the commencement of your next billing cycle reflecting these changes.

**2.7.2.4** While under a contract, you may not downgrade to a lesser priced plan than the plan you established with your original contract. While under contract, you may move to an upgraded Service Plan subject to the Terms and Conditions offered by Wirefree at anytime with no extra charge.

**3.0 Billing**

**3.1** All prices quoted on our promotional material are GST inclusive.

**3.2** Account Payments

**3.2.1** We reserve the right to disclose your credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details.

**3.2.2** The initial payment is made in advance and must be cleared prior to the account being activated for use.

**3.3** Additional Charges may apply in the following circumstances;

**3.3.1** If incorrect account details have been given, sufficient funds are unavailable or changes to the account details are not passed on to us.

**3.3.2** Where your account is suspended for any reason under this agreement.

**3.3.3** If automatic payments have not been selected, it is your responsibility to pay all monies owing on your account by the due date.

**3.3.4** Any expenses, cost, or disbursements incurred by us in recovering any outstanding monies including dishonor fees, debt collection, agency fees or legal fees.

**3.3.5** To re-activate a closed account, re-connection fee will apply.

**3.3.6** Sending out of hard-copy invoices.

**3.3.7** Failure of the customer to be sufficiently prepared for a professional install as per clause 6.

**3.4** It is your responsibility to pay all monies invoiced by the due date, even if the charges are the result of unauthorised access to your service.

**3.5** You may request your account to be placed on hold for a minimum of 1 calendar month, paying only for access to your webmail service. Your internet service from this account will be suspended for the time your account is on hold. A minimum of 7 days written notice is required prior to the beginning of the hold period being requested.

#### **4.0 Customer Responsibilities**

**4.1** The account holder must be 18 years or older.

**4.2** If the customer allows a person under the age of 18 to use the service, then the customer is legally responsible for supervising that person's usage particularly to ensure the suitability of content transmitted to and seen by that person.

**4.3** It is the customer's responsibility to ensure that their computer meets the minimum specification to connect to the service, including any software and hardware requirements.

**4.4** The customer must not connect any unauthorised equipment to the service.

**4.5** The customer is asked to regularly check their default e-mail address for any correspondence from us about your service.

##### **4.6 Security**

**4.6.1** Wirefree Networks will allocate a fixed user ID to the customer.

**4.6.2** The customer agrees to keep their password confidential and acknowledges that it is liable for all charges associated with the service resulting from the use of that password. Wirefree Networks assumes no liability for unlawful use of the customer's password even in the event of it being lost or stolen and in those circumstances the customer agrees to immediately notify Wirefree Networks of such loss or theft. On application to Wirefree Networks the customer may change their password at any time.

**4.6.3** Unauthorised access of you service via an unprotected connection (including wireless interception) is the sole responsibility of the customer. It is recommended that you take necessary measures to protect your equipment and service from unauthorised access.

**4.6.4** The customer acknowledges that Wirefree Networks cannot fully protect your computer, software and data from viruses and any other malicious programs; it is therefore the customer's responsibility to take necessary preventative measures.

**4.7** The customer acknowledges that some material in the Internet may be offensive, inappropriate or unsuitable and agrees that Wirefree Networks has no responsibility whatsoever for such material. Additionally the customer hereby agrees that in using the service the customer must not;

**4.7.1** Use the service to commit any fraud, or undertake any illegal or unlawful or offensive activity or breach any Australian legislation, codes of conduct or standards established for the internet service industry.

**4.7.2** Transmit, store or place on Internet any content which is defamatory, offensive or of an obscene and menacing character;

**4.7.3** Place on the Internet or issue invitations to give directions (including hyperlinks) to illegal content or potentially illegal content.

**4.7.4** Disseminate computer viruses or other malicious programs.

**4.7.5** Engage in conduct so as to interfere with or disrupt any other Internet users or service providers.

**4.7.6** Engage in sending unsolicited emails, spamming and advertising material.

**4.7.7** Talk about hacking or about breaching any laws, talk or engage in any conduct that may contravene any Wirefree Networks policy (including but not being limited to any Acceptable User Policy that we may have and our Privacy Policy and any other policies or practice to which Wirefree Networks may subscribe from time to time including codes of the Internet Industry Association Of Australia.

**4.7.8** Not engage in any unauthorised use of any material protected by patent, copyright, trademark or other intellectual property rights.

**4.8** The customer shall indemnify an hold harmless Wirefree Networks from and against any action, claim or loss that Wirefree Networks may suffer may have brought against it as a result of the customer breaching the contract, including but not being limited to those listed in clause 4.7.

**4.9** The Customer agrees for the purposes of the *Privacy Act 1988* (the '*Privacy Act*'), to their Customer details being provided by Providers to DCITA and potentially other appropriate agencies for the purposes of Program administration, regulation and evaluation and policy development.

**4.10** Where your continued use of the service adversely affects the network, we reserve the right to suspend/control the service.

**4.11** Any persons that use your service have read and understand the contract.

## **5.0 Our Responsibilities**

**5.1** Network outages may occur from time-to-time that may result in the customer suffering from downtime. In the case of scheduled maintenance outages, all customers who may be affected will be notified through their default e-mail address no later than 7 days prior to the scheduled outage, unless schedule outage is from emergency maintenance where you will be notified as soon as practically possible.

### **5.2 Connection of Service**

**5.2.1** Given that all required cabling is completed and active, and we have received an application form from which payment has been successfully processed, service connection will be provided within ten working days.

### **5.3 Outages**

**5.3.1** We will endeavor to restore services resulting from system wide outage within 12 hours, a community wide outage within 24 hours, and an individual outage within 48 hours of initial report.

**5.3.2** Restoration of services resulting from outages, where possible will be kept within indicated times, but may vary in the event of exceptional circumstances.

**5.4** If Wirefree Networks provides a customer with a link to another web site or resource, Wirefree Networks will not be responsible for the content of those web sites or resources and Wirefree Networks makes no warranties or representations as to the accuracy of any information in or linked to its website and assumes no liability or responsibility for any errors or omissions in content thereof. Additionally Wirefree Networks will not be responsible for the content form of any information or data passed into the Internet in the provisions of the service including any information which is defamatory, offensive, unlawful, or unsuitable for people under 18 years or of any one in particular. Nor will it be liable for any damage or viruses which may infect, contaminate or act to the detriment of any computer equipment or other equipment owned or utilised by the customer.

**5.5** Wirefree Networks provides the service in accordance with its privacy policy which is available on request.

## **6.0 Installation**

**6.1** Prior to a Wirefree Networks technician arriving at the premises, you must ensure that;

**6.1.1** Your computer meets the requirements set by Wirefree Networks including any hardware and software needed to use the service and lightning protection where required.

**6.1.2** That prior to installation, you have all original operating system installation media.

**6.1.3** It is your responsibility to create a backup of all essential files in case of loss or corruption of data.

**6.1.4** The computer is normally located within two (2) meters of the wireless modem point. If the computer is located at a further distance you must notify Wirefree Networks when booking a time with the technician so that they can prepare a longer connection lead. Non-standard connection leads will attract a per meter charge.

**6.2** Where we specify a time for your installation, we will try to keep the specified time, but we cannot be liable for any loss or damage you suffer if we fail to do so.

**6.3** Where an installation cannot be performed due to the failure of the customer to provide the above, an additional charge may be made.

## **7.0 Commencement of the Contract and the Service**

- 7.1** The contract is active from the date the application form is signed. Wirefree Networks may deduct any initial setup costs including the cost of the service over the initial billing period between the activation of the contract and the commencement of the service.
- 7.2** The provision of the service will commence once all the following criteria have been met:
  - 7.2.1** Cable infrastructure has been installed and tested ok.
  - 7.2.2** The application form including customer attestation has been completed fully and accurately.
  - 7.2.3** Payment of the initial setup costs including the cost of the service over the initial billing period has been successfully processed.
  - 7.2.4** You have received/collected the CPE from Wirefree Networks.

## **8.0 Abuse Procedures will be commenced by**

- 8.1** Giving an unauthorized person the customer's account and password details;
- 8.2** Deliberately or recklessly disrupting Wirefree Network's Service or activities, or engaging in any activity likely to disrupt the same, either deliberately or not;
- 8.3** Engaging in spamming
- 8.4** Misusing access to the internet in a matter identified in writing by a competent law enforcement official as unlawful;
- 8.5** Using access to the internet to menace or harass others;
- 8.6** Behavior that results in the disruption of other people access to the internet or their enjoyment thereof, including but not limited to computer viruses, email bombardment and damage to internet-connected resources and channel flooding;
- 8.7** Using access to the internet to unlawfully obtain access to other networks.

## **9.0 Suspension or Termination of Service**

### **9.1 By User;**

- 9.1.1** The User can terminate the account at any time, providing you provide written notification at least 7 days prior to the next billing cycle.
- 9.1.2** If an account is closed while in contract, termination fees will apply.
- 9.1.3** Any Pre-paid fees for services are non-refundable on termination
- 9.1.4** In some cases a cooling off period is required by law. If you are covered by a cooling off period, you may terminate the service without penalty if you provide written notification to Wirefree Networks within the timeframe allowed from the commencement of the Agreement.

### **9.2 By Wirefree Networks;**

- 9.2.1** Any breach of the contract, as opposed to termination, Wirefree Networks may choose to suspend the service for such period it determines.
- 9.2.2** Wirefree Networks supports the right to privacy and the laws that support privacy in all forms and it strictly prohibits the sending of unsolicited mass messages of any kind or any other email forms. We will terminate the account of any member who uses "spamming" techniques to solicit referrals and who does not remove a recipient upon being requested to do so by that recipient.
- 9.2.3** If Wirefree Networks suspends your service for any breaches under the agreement, you shall remain liable for all charges due throughout the period of suspension. A fee may apply.
- 9.2.4** Upon the death of the account holder, the account shall be deemed terminated.
- 9.2.5** If Wirefree Networks terminates an account whilst in contract, a termination fee may be applied if termination is resulting from the misuse of the service.
- 9.2.6** If the account is terminated, you remain liable for all charges payable under the agreement in respect of the provision charges payable under the agreement in respect of the provision of services from the time of termination to the end of the billing cycle or contract period.

## **10.0 Ownership and Use of the Equipment and Facilities**

**10.1** The Wirefree Networks Broadband Network is an important part of our ability to provide you with the service. This means that we need to make sure that the Broadband network remains our absolute property at all times. The boundary of our Broadband Network is the Wireless Modem Point in most premises.

**10.2** Internet connections can only be made to Wireless Modem Points installed by Wirefree Networks authorised installers.

**10.3** All new CPE provided by Wirefree Networks is covered by a 12 month limited warranty

**10.4** All CPE provided by Wirefree Networks remains the property of Wirefree Networks. If the Customer terminates their account the equipment must be returned to Wirefree Networks. Standard termination fees apply, equal to half that of the contracted plan level, over the remaining unpaid months of the term. Any remaining paid months that have not been used will be forfeited.

**10.5** All CPE owned by Wirefree Networks, including but not limited to loan stock, must be maintained in good condition and repair. Wirefree Networks will, at all times, retain ownership of this equipment. Wirefree Networks may charge the Account Holder any reasonable costs incurred for repairing or replacing the equipment if damaged, lost or stolen.

## **11.0 Internet Support Facilities**

**11.1** We provide you with an internet support service 24 hours a day, 7 days a week.

**11.1.1** If you are experiencing any difficulty with your access, you can contact support:

**11.1.2** By phone on 1300 651 638

**11.1.3** By E-mail on [support@wirefree.net.au](mailto:support@wirefree.net.au)

**11.1.4** By fax on 02 4832 2530

**11.1.5** We encourage you to make use of this free service for genuine service issues. As our support technicians are trained to solve broadband internet issues, we ask that you acknowledge that:

**11.1.5.1** We cannot offer support for networking multiple PC's;

**11.1.5.2** We cannot offer support for general software issues

**11.2** We cannot offer support for general hardware. In an effort to control spam, Wirefree Networks constantly monitors and excludes known spam ports. In addition, Wirefree Networks provides spam monitoring facilities. This does not prevent all spam from being received, however it does reduce the sheer amount of spam to your mailbox.

## **12.0 Contract period**

**12.1** Once the initial contracted period ends, you will be contracted to Wirefree Networks on a month by month basis.

**12.2** Customers have the option to have a maximum contract period of no longer than 24 months. We are required to provide the Service on the applicable Program Service Terms and Conditions for a period of 3 years from the time that the first Program Service was provided to the Customer.

## **13.0 Complaints Procedure**

**13.1** If you wish to log a complaint about our services or associated matters, you may contact us via email, post, phone or fax, or via our online complaints form.

**13.2** If you are dissatisfied with the outcome of your complaint, you may request to have your complaint escalated to be dealt with by a manager.

**13.3** As a last resort, you can lodge a complaint through the Telecommunications Industry Ombudsman (TIO), which you can lodge online at <http://tio.com.au>

## 14.0 Force Majeure

**14.1** If the party is unable, as a result of force majeure, to carry out their obligations under this agreement, they shall give the other party prompt written notice of the occurrence and particulars of the act, event or cause constituting the force majeure and, in so far as known, the probable extent to which it will be unable to carry out such obligations for the period provided the party has used all possible diligence to overcome or remedy the force majeure as quickly as possible.

## 15.0 Proper Law and Jurisdiction

**15.1** The laws in New South Wales shall govern this agreement and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

## DEFINITIONS

**Agreement:** Application or Bundling contract if required.

**Attachments:** Any files or documents that are attached to an email

**Billing Cycle:** The Customer's selected billing period option (monthly, quarterly or annually)

**Community-Wide Outage:** An outage that results in downtime, affecting an entire Wirefree Networks community.

**CPE** Consumer Premises Equipment (e.g. Modems, Routers, Wireless equipment etc).

**Cruise Control:** Where the connection speed is reduced to simulated dial up speeds.

**Default Email Address:** The email address you have specified to be your main Wirefree Networks email address

**Defined Abuse** means misuse of the service and access to the internet as per clause 8.0

**Direct Debit:** A payment method by which you authorize us to deduct a set amount every payment period directly from your nominated bank account.

**Download:** Any data that is received by your computer from the internet

**Downtime:** The period in which a customer cannot gain access to the service due to network outages.

**Wirefree Networks:** Wirefree Networks – ACN 111 818 896

**Encapsulation:** Coding and encryption of your email when sent.

**Force Majeure:** means any act, event or cause beyond the reasonable control of the party concerned including, but not limited to, acts of god, perils of the sea, war, sabotage, riot, storm and tempest, earthquake, landslide, explosion, strike and other labour difficulties (whether or not involving employees of the party concerned) or failure of the internet or world wide web.

**General Traffic:** All traffic that is not classified as local or internal traffic.

**Individual Outage:** An outage that results in downtime, affecting an individual premises or street.

**Internal Traffic** All traffic that does not leave the Wirefree Networks network.

**Outage** The inability to deliver the service

**Premises** The physical address where the service is connected.

**Spamming:** Spamming is the unsolicited and unauthorized sending of messages of any kind to businesses and people who do not know you personally and have not agreed to receive your messages.

**System-Wide Outage:** An outage that results in downtime, affecting the entire Wirefree Networks Internet network

**Traffic Limits:** The total allowable data transferred through your account over a calendar month

**Upload:** Any data that is sent by your computer to the internet

**Written Notification** Acceptable forms of Written Notification is email, fax or registered mail

**You, Your, Customer, Applicant:** The account holder as per the name given on application.

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